

THE
OUT-OF-DOOR
PARLIAMENT.

BY A GENTLEMAN,
OF THE MIDDLE TEMPLE.

*Deus hæc fortasse benigna,
Reducet in fidem Vice.* HOK.

All oppressions which may happen to spring from any branch of the foreign power, must necessarily be out of the reach of any stated rule or express legal provision. But if ever they unfortunately happen, the prudence of the times must provide new remedies upon new emergencies.

1 BLACKST. 245.

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THE
CUT-OF-DOOR

PARLIAMENT

THE GENTLEMAN

OF THE MIDDLE TEMPLE

1800

Printed by J. G. & J. H. B. at the
Printers Office, in the Strand, near
St. Dunstons Church, London.

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P R E F A C E.

AN apology may be expected for some opinions in this book which are novel, and altogether irreconcilable with the accepted doctrine of Sovereignty in England. The Pope established inquisitions to smother, in the birth, all doctrines inconsistent with the temporal grandeur of the See of Rome. One man dared to hazard the thunder of the Vatican, and, in defiance of anathema, and all the terrors of that oppressive prerogative, his opinions made way, and almost all Christendom was miraculously freed.

Popish policy early wormed itself into the secular Government of every country in Europe. Monarchs found it material to adopt the principle, and engraft it into their civil Constitutions ; and after religion

hath been long freed from it, the poison continues to destroy the civil Government of England.

The consequence hoped for, from the present publication, is, that the men of England shall begin to think for themselves; shortly, then, shall the subjects of England be freed from a thralldom, which arrogant usurpation first forced into the Government, and superstitious indolence hath preserved, against the reason and spirit of the common law, and the nature and end of the Constitution itself.

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O U T - O F - D O O R

P A R L I A M E N T.

NO man deserves to be a member of that Society, with whose concerns he can feel himself unaffected. The apathy which can uninterestedly adapt itself to every change, ought not to be found in England. Those rights of the people, which no usurpation can overwhelm, no convention, however sacred, can put by, should stimulate every man to the benefit of the community. On the prospect of scarcity, drones should be out-cast from the hive. When corporations and counties add exertion to exhortation, for the preservation of the rights of the subject, every man will feel it his duty to be an individual agent; no man will shelter his indifference with the excuse that he is not a freeholder of any county in the kingdom. An ob-

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server

server will consider the life, liberty, and property of every man alike prizeable. From what part soever of the globe he may come, he will, on his landing in England, catch the influence of the sun of freedom; he will throw his eyes in rapture round the wide horizon to gaze upon its beauty; he will lament its obscurity, and in gratitude for the heat he feels from it, exert all his power to restitute its splendor.

If he hath had his nativity under a despotic government, he will admire, he will determine; his gratitude will be active, but the agent will be awkward; he will find it difficult to free him from the first impression, to eradicate his obligation to tyranny; prone from his infancy to implicit obedience and implicit faith, he will labour to reconcile his passion with his duty. The idea of liberty will work within his mind, like a well-built ship on a tempestuous sea; the pilot will be skilful, but the wind, the waves, and weather shall distract him; he must tack largely and frequently in his course; like a late learned commentator on the laws of England, the blaze of throne shall awhile astonish him; early attachments shall again refrain him, but like the commentator, he will in the end, in spite of all opponents, force the prerogative of the Prince to bend to the welfare of the people.

Such

Such alike will be the embarrassment of a stranger, whose nativity is despotic, and of a native of England, who is hired to act, speak and write against his judgement. Such a commentator must be an ambidexter champion, and whilst he defends liberty against prerogative, he will in his outset spiritedly pronounce, * "That one of the principal bulwarks of civil liberty, or (in other words) of the British Constitution, is the limitation of the King's prerogative, by bounds so certain and notorious, that it is impossible he should ever exceed them, without the consent of the people on the one hand, or without, on the other, a violation of that original contract, which in all States impliedly, and in ours most expressly, subsists between the Prince and the subject." He will with dignity declare, † "That there cannot be a stronger proof of that genuine freedom, which is the boast of this age and country, than the power of discussing and examining with decency and respect the limits of the King's prerogative." In his survey of the Constitution, he will look back to the infancy of the State; he will, with a laudable pride shew, that though the garment was necessarily altered as the child advanced to maturity,

* 1 Blackst. 237.

† Ibid.

a thread of the fabrick never was impaired, that freedom is in the web and in the woof; submissive to the general impulse he will exclaim, * "That liberty is implanted in the Constitution, and so rooted in the very soil of Britain, that a Negro, when he sets foot in England, becomes, *eo instanti*, a freeman." But he will then begin to suspect he has gone too far, and for a tribute to his Prince, he will compound the almightiness of James I. the haughtiness of her predecessor, the tyranny of her father, and the authority of Finch. In a word, he will be the advocate of prerogative, and the champion of liberty.

But if a stranger, a native of a country, where liberty is considered the birth of every man as in Britain, should arrive in England at this interesting period, what must be his agitation and affection? If his breast glows with the recent successful exertions of his countrymen, for the restitution of freedom and their native rights, without commotion in the State, without tax or general contribution, without accusation of Ministers, or disorderly reviling for past oppression---he will feel what the other stranger cannot, what the commentator would not, he will withhold his belief, that oppression could fix her foot in Eng-

* 1. Blackst. 127.

land;

land; fired with an enthusiastic passion for freedom, he will lament that, by any possibility, liberty should be lost to any subject of his Sovereign; he will consider how desperate is Tyranny; he will cautiously watch every footstep of the monster; he will be persuaded that if, with the willingness of a Proteus, she once gains access to the Throne, the power of an Hercules shall hardly pull her down; distrusting his future strength, he will exert his instant might to strangle her before maturity.

But if there be no room for conjecture, if he sees Tyranny cloaked, lurking behind Corruption, he will undaunted advance to unmask her, to expose her to the malice and merriment of his countrymen---for he will utterly forget that he is not a native of Britain---he will detect the poisoned dagger beneath the gaudy cloak; he will drag the roll of her purposes from her bosom, and read, under her own character, that that liberty she dare not storm, she is contriving to undermine. Whilst his Sovereign is yet secure, unimpeached in his credit, unshaken in his justice, unsuspected in his rule---whilst he may himself yet glory in his duty to him, and dare calumny to challenge his allegiance, he will, for the sake of his Sovereign, his country, and his own, boldly address THE MEN OF ENGLAND.

To

To those whom heedless dissipation hath led beyond even the hopes of retrieving their circumstances, heedlessness and dissipation become dearest friends, they feel the pang of despair only in reflection; contented to believe they are irreparably ruined, they will trouble themselves with no item of the account; he is their declared enemy who dares to expostulate; with the foulness of language, they will deny his veracity, and, with a courage inspired by intoxication, threaten to correct his insolence---such men only will deny that the Constitution of England is infirm, even to the danger of dissolution.

From the most vigorous frame that Nature knew, with beauty that commanded the admiration of the world, her patrimony extensive, her apparel grand, she is become the scoff and scorn of the nations; insulted, violated, contemned, sullied in honour, her beauty disfigured, her members mutilated, her revenues rapined, her strength wasted, her appetite voracious; like the traveller in the parable, she is fallen among thieves who have stripped her, and wounded her, and left her half dead; hardly a Samaritan is found who will shew mercy unto her, who will, or, more to her discomfort, can contribute twopence to her cure; her only hope, and that of those friends who yet remember her
with

with love, is, that her disease shall end in a fever, and her peccant humours fly off in a convulsion, and that in the fury of the fit she shall avenge herself upon her undoers.

England hath been generally considered an exception to that State aphorism, “ that
“ subjects are the lawful prize of Princes”
---that Kings have the same title to the servitude of subjects, as man, according to the fable, originally acquired to that of the horse. Numerous, and nearly periodical, revolutions in England demonstrate, that her own Princes have never so considered of this kingdom. Although in every contest between the Sovereign and the subjects, from John to James II. victory hath uniformly declared for the people, yet have not the Princes of this realm ever abandoned the design of a Royalty independent of the people. The wisdom of the present reign hath discovered, that British Kings have heretofore battled in improper mail, and with unweildy weapons, so long, that on the first unsheathing, the design was blown about, and every man in England stood on his defence; these therefore are laid by. There is now no storming with prerogative; no disuse of Parliaments; no minion hath closetted the King against the conversation or counsel of the great men of the realm. But in lieu of those mischievous instruments, the influence of the Crown in
Parliament

Parliament is exerted; an engine more fatal in its operation, and less suspected in its progress: this it is * “ against whole
 “ oppression, violence, and fraud, the law
 “ proves too weak a defence, which
 “ threatens a dissolution of the contracts
 “ of Society, and makes extraordinary re-
 “ sources to first principles necessary”---
 which demands from the people that spirit and action, which is only found in an out-of-door Parliament.

By the Constitution of this country, the legal voice of the people is heard only in Parliament. With a confidence peculiar to themselves, to their representatives in Parliament the people of England intrust their liberties, their properties, their lives; they toil, they sow, they spin, they pour more than their abundance into the garner of the State, convinced that their absolute and relative rights cannot be infringed whilst their representatives shall be faithful. Every page of British history, from the homeliness of Jeffery, of Monmouth, to the polish of Mr. Hume, doth justice to the honest sensibility of Britons; to that generous ardour which anticipates the happiness of the Sovereign, and diffuses his triumph through every heart in his dominions, which swells the pulses of his subjects at

* 1 Blackstone, 251.

the proclamation of his success, and depresses them on the alarm of his disaster; but our annals are not flatterers; they likewise bear testimony to perhaps a nobler, and certainly a no less material affection of Englishmen; a passion which cannot brook treachery, and which an attempt at tyranny irritates to madness; a passion which interests itself in the prosperity of every subject in the realm; which cannot be indifferent to the oppression of its greatest rival, or envenomed foe, which overlooks enmity and disregards distinction; which * unscabbarded the rusty sword against the most glorious Prince, and unsheathed the executive axe against the most despotic; which met the Monarch in the field, and on the Bench; which fired all the freeholders of England at one period; and Hambden against an host at another; a passion which time hath matured, whose wisdom can detect arbitrary design, under every disguise, and courage defy it, in every armour; a passion whose beginning is petition, its progress firmness, and its end action. Stimulated by this passion, the people of England have now petitioned Parliament.

Englishmen are not strangers to the interpretation of words; they know, that,

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* Earl Warren's opposition to the *Quo Warranto's* of King Edward I.

in a legal sense, to petition is to demand, to insist upon; they know it is their right to demand from the Sovereign, their Representatives, and the Peers, redress of grievances, as often as need shall be. Once at the accession of a Sovereign, the rights of the subject were demanded to be secured against the mischiefs of the predecessor; the English love their King too well, to let him lose the honour of a patriotic reformation in Government; they too highly value the heir apparent of the Crown, to suffer his succession to be endangered, by postponing such reformation until the demise of a Prince since whose accession every evil had its birth.

If the apothegm, which inculcates, that the voice of the people is the voice of God, hath miscarried in its force, it is owing to its frequent misdirection; it never yet was heard from the Parliament, it cannot be intended of the people in Parliament; society was formed out of the people at large, distinctions grew by their consent. In England, one man was appointed Chief Magistrate, and called King; some were named Peers, and the people reserved to themselves a share in the Government, which they wisely delegate to their representatives, who are thence emphatically called the Commons. A reversion is inseparably incident to every particular estate;

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the fee and inheritance of freedom, that controul necessary to its security, must ever remain vested in that body from whose donation those estates originally moved. The appointment of a Parliament lessened indeed the usufruct of the people, but nothing abridged this right of empire. The dominion of the inheritance is still in them; they are still the Lords of the great demesne, and entitled to every appendage of seigniory, fealty, and forfeiture for violation of those duties, the performance whereof was the consideration of the grant. It would be monstrous to affirm, that because for the general good every member of the community engaged, on the most exemplary penalties, to submit to the ordinances of the legislature to whom they had committed their interests, yet that any member of that Committee separately, or all the members conjointly, may, with impunity, contrive against the common-weal.

The very maxim, "*Vox populi vox Dei*," is truly expressive of this power of the people, the experience of ages having compared the voice of the people to the voice of God. The principal attribute of God is infinite goodness, without which those of wisdom and power would be intolerable; and if it fell any way short of infinity, would render the Deity imperfect, and create difficulties insurmountable, as

oppression would be an effect inconsistent with that goodness; and as words are declarative of the mind, liberty must be the evident effect of that goodness, and is clearly the voice of God; otherwise his goodness should be contradictory to his wisdom; for by his wisdom he formed men perfectly alike, gave them the same means of acquiring knowledge, the same faculties to apply it; by his wisdom he endowed all the sons of Adam with the same power of attaining happiness, which would be utterly beyond the reach of man, if any one was appointed to oppress them. It is a known principle in natural philosophy, that from like causes, like effects will arise; where oppression is the cause, its natural effect will be resistance, and an endeavour in the people to recover their liberty. This spirit must become general, and actuate every breast, arising as it does from the same cause, and operating in the same manner. This great struggle must be the voice of the people, and that voice must be the voice of God.

The supineness of the people of England, for a long succession of ages, their passive obedience to the will of their Princes, made these at last conceit that they held an authority wholly independent of the people. One was more wild than Alexander in his notions. The Macedonian was content to be thought the son of Jupiter, among the
Greeks;

Greeks; the Caledonian would be himself the Ammon of the English. His extravagance opened the eyes of the people; they were compelled to prove his son mere mortal. From that period to the Revolution, the history of England is a continued record of the rights of the people, and of their spirit to defend them, and the issue of every struggle hath proved the voice of the people to be the voice of God.

* Individual oppression may stir the representatives of the people; general oppression must stir the people themselves. When oppression perceives danger of detection or defeat, it deserts the frequented path; crafty, cautious, secret. It will not dart its venom directly against any individual; it hath every property of the first destroyer, save that, it will not couple deformity with danger; it will assume the beauty and virtues of an archangel; it will flatter, it will seduce, it will lead to irretrievable ruin by the hope of supremest bliss; it will spoil the tree of knowledge of good and evil, for the composition of a bribe: when the heart is deeply touched, it will offer the forbidden fruit. The purpose shall be unenquired of till enquiry shall be vain. The deluded shall not be roused to

* The oppression of an obscure individual gave birth to the famous Habeas Corpus Act. 3 Blackstone, 135.

a sense of the horror of his situation, till the judgment of the avenger thunder in his ears; until he feels that the groveling of the serpent cannot mitigate his toil in tilling that ground he was ordained the ruler of; he will not be convinced there is a power above him; until the voice of the people drive him from his paradise, he will deny that the voice of the people is the voice of God.

The ministers of oppression are corruption and influence; it will retain them till it reach the aimed at eminence; it will then find an help meet for it, tyranny shall be its consort, all its commands shall be, "I will;" all its replies, "you shall not;" State necessity shall demand, tyranny must have; the transition is exceeding easy; established influence is established power; it rests only in the will of the obliged in what manner it shall be exercised: The trepanned shall be astonished: "why we were the nearest friends." Murmurs follow; the axe and the halter are in the hands of the master, the consul is become a dictator, with the power of life, robbery and death; and the nobles and the commons shall be silenced; the throne of Britain shall become a second time hereditary, by divine indefeasible right; passive obedience and non-resistance be again the birth-right of the people, a York and a Lancaster shall once more plant their roses in
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the garden of England; the sons of the Conqueror of France shall again lie in wait to destroy the tranquility of their country, shall watch till the cup of power be full in the hand of one, and snatch it from his gripe only to slake his own thirst. Liberty shall be compelled to couple itself with Tyranny; another Tudor shall mock the men of England; shall declare, that with their own consent, his proclamations are the laws; another Brewer's son shall finally, to root out tyranny, utterly demolish liberty itself.

This is not yet the situation of England; the prospect is, however, not remote; that the Crown has acquired, and for many years exercised an unconstitutional and uncontrollable influence in Parliament, the votes of the two Houses demonstrate. The power of the people can alone preserve the State against it; all England is convinced of the mildness, wisdom, piety, and good government of his present Majesty: and if the people could believe implicitly the doctrine of the law, that his Majesty is immortal, with pleasure would they surrender their laws to his royal will: but "*debemur morti nos nostraque;*"----and they have no assurance that the inheritor of his crown and royal dignity, shall inherit his virtues; they know he must of necessity want the glorious obligation of gratitude to the people

ple for so great a sacrifice: Caesar, they say, ruled well; because he was the first tyrant in Rome. Augustus considered himself the heir of the empire, proved his authority by merciless prescriptions:---he too was, notwithstanding, bearable; but his successors, for ages, disgraced nature itself; these reflections stir the people to prevent calamity in England; to exercise their lawful authority in an Out-of-door Parliament---they have summoned such a Parliament by their petitions to the Houses; they shew themselves determined by Associations and Committees of Correspondence.

Men of all parties agree, that the exertion of the people is now necessary; some, however, distrust the means; Committees of Correspondence and County Associations are reprobated and railed against as unnecessary, dangerous, unconstitutional: every effort to reconcile parties, and add reason and spirit to public exertion in time of necessity is laudable. The uncommissioned winder of an horn, on the approach of an enemy, deserves some praise: In vain are the assemblies of the people, in vain their petitions, if men, themselves the object of public hatred and vengeance, shall be believed when they charge those who, in obedience to the voice of the people, assist to forward the object of the petitions with ill intentions towards the State, with designs

signs against public tranquility, with desires to fire the dwelling through the hope of plunder.

Man's heart is not altogether so inscrutable as is commonly thought; the distinguishing characteristic will be perspicuous to a constant and diligent enquirer; that wisdom, which sets man above the beasts, we have from God: it is that which man's utmost power of comparing, declares to be the only likeness of his Maker he can boast, which cannot deceive him with respect to his own heart, with respect to others enables him to give the true motive to the action, and from the action to decide upon the man.

The propositions of Mr. Burke drew not simply the wonder, that involuntary applause of the Minister; in despite of professional prepossession, and official obstinacy, they commanded his express, his unconsidered approbation. When the highwayman applauds the justice which condemns him, the man free from guilt may unerringly confide in it. The heart operates most forcibly on first emotion; it requires the sophocism of reason and reflection to overcome feeling; to overpower the principle on which instantaneous approbation of worthiness is founded. Perfect goodness, like perfect beauty, compels that admiration that becomes a man.

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Envy,

Envy, malice, rivalry, every passion which owes birth to a bad mind, requires time to discern false colour and mis-shape. The Minister's approbation was almost two hours old before his heart would surrender its new honour; the pleasure it then knew was dear from its great rarity. The struggle was at length got under. The Minister declared, that though Mr. Burke's plan was lovely, it might not be faultless; that though he highly approved of it, he would not pledge himself to support it. Hackneyed in opposing every thing, which might possibly interfere with his influence, he suddenly disclaimed the only great action of his reign; he felt his lip offended, and shrunk into the shell of official duplicity. The exertions of authority have since stamped virtue on the name of Burke, and universal approbation on his plan.

In aid of this plan have petitions flowed, and are still flowing from the counties; have Associations and Committees of Correspondence been resolved upon and entered into.

Petitions are the unquestioned birth-right of the people of England. That right is older than the Revolution; it owes not origin to the Bill of Rights, or to the complacency of the Prince of Orange. The Sacrifice of the Martyr proclaimed to the world how sacred Englishmen esteemed it:

Edward

Edward II. and Richard II. their favourites and minions expiated their heresy against it; the Danes and Saxons were not unacquainted with it; and there are traces of its usage, whilst the Romans governed in Britain. James II. knew it and its force. The example of a King ought not, perhaps, to be produced in precedent; but when that Prince, after the reproof he received from the father of Lord Russel, sought refuge in petitions, the right of the people, in that respect, is not unreasonably insisted upon. After that victim to bigotry and tyranny had found that the art-monarchical had lost its virtue, when the arbitrary talisman was broken, he then suborned the people to petition in his favour; confident, that how ineffectual soever the machinery might be where he was thoroughly known, such effort would stamp his credit in a foreign court; for even foreigners have ever been apprised of this principle of British Freedom.

But to little purpose is the right of petitioning contended for; safely may it be admitted by the enemies of the people, if it be a right without a remedy. Little like should the voice of the people be to the voice of God, if their cries be as those of an infant in a desert. If the people have not also the power of making their cries heard; if when they discover that they

have been shamefully spoiled of that share in the legislature which they originally reserved to themselves, they cannot demand it with assurance of success; if the majority of the men in Parliament may disclaim to hold of the people, and to owe them either suit or service, then is the boast of liberty in Britain worse than a mockery; it is the harmony of chains, every sound is accompanied with a pang.

The people, as ever hath been the case, were long blind to their danger; they cry not out till ruin stares them in the face; they have seen the largest portion of the empire dismembered in consequence of parliamentary injustice; they have seen the influence of the Crown subdue the honour and fidelity of their representatives, in the great council of the nation, and give law to the Parliament; they saw that the national glory was not the object of the Minister; that he meant to provoke a war with France and Spain, when he embroiled the colonies; he knew that freemen would not bear his tyranny---that every page of English history, till within twenty years past, was dear to the colonists; that they would advert to the appeals of the United Provinces to Queen Elizabeth, and of England to the Prince of Orange, and the consequent settlement of liberty in the Netherlands and England; that they themselves

themselves would make a like appeal to
 the inveterate enemy of their oppressor,
 and that the consequence must be open
 hostility, which should end in a national
 quarrel, which might afford a pretext for
 draining the scanty leavings of prodigality
 and dissipation; the event has justified his
 sagacity---the people see the same Minister
 from year to year appealing to their purses,
 not with the modesty of a suppliant, but
 the brow of a commander; they see, that
 to his star the wise men pay obedience;
 that the majority of the Members of the
 House of Commons are his creatures, and
 find shelter in the motto of his Garter, de-
 nouncing evil against all who presume to
 think evil of them; they have seen the
 Americans constitutionally implore redress
 from the justice of Parliament---that their
 Ambassadors were not heard; that they
 had made petition for themselves, their
 wives, and their children, to that which
 had no life; that for life they had prayed
 to that which was dead, and, for a good
 journey, asked of that which could not set
 a foot forward---the people of England see
 that no part of the empire is to be con-
 sidered as a favourite by the Minister;
 that they are to be treated as the Americans
 have been; they therefore provide that the
 power they petition shall not be so helpless
 ---they examine their rent-rolls and led-
 gers,

gers, and easily determine at what time their children must want bread; at what time all resources must fail, if they call not their Steward to account---they begin; he, struck with the dexterity of his brother in the Gospel, follows his example; he calls before him, his Lord's debtors, instructs them to share the spoils of the household, to alter their bills quickly, for the time was come when he might be no longer Steward. *Scandalous* items, he wrote, *foolish*, for bribes and scalping knives; Jews-harps for the unharmonious, and razors for the beardless. The people commend his wisdom, and turn him over to his friends of the Mammon for his reward.

If the right of the people to petition and redress be not hitherto laboured, it is merely because it is considered as incontestible. The evidence of the senses is only requisite to the conviction of simple truths; the blind cannot be persuaded of colour, the deaf of sound; no man, not wanting those senses, will be detained from the charms of a concert, or the beauty of a fine painting, by the arguments of such men. There cannot be a position simpler, plainer, or more true than this, that in the English constitution, the coercive superintendant supremacy is lodged in the people, in an Out-of-door Parliament. Such a supremacy as shall as well prevent the subversion
of

of liberty by any combination of the appointed powers, as restore it after it hath been subverted by such a combination.

In all governments, whose subjects have not irrevocably surrendered their lives and liberties to the absolute disposal of masters, such a supremacy must be lodged somewhere. If in England it could be claimed by the King, or any other branch of the Legislature, the people and the other two branches must, after a little time, be the slaves of that one. The safety of the State, the security of society, should be then intrusted to him or them who were most interested in its overthrow; upon the same principle, that by the positive law of England, the person interested in the death of a minor, shall never be intrusted with the guardianship of his person; it is provided by the parties, to that original contract spoken of at the Revolution, that the power of life and death over the liberties of England, should never be intrusted to the King, Lords, or Commons distinctively, or to the whole Legislature compoundedly; otherwise in any emergency, how alarming soever, the people are destitute of resource.

A great * lawyer says, " If by any means
" a misgovernment shall fall upon the Par-
" liament, the subjects are left without all

* Sir Mat. Hale—of Parl. 49.

" manner

“manner of remedy;” and the Judge, Blackstone, hath carried the notion of a sovereignty in England independent of the people as far as it will bear; although in his System, he hath fixed the King as the governing luminary, the center of British glory, and hath given derivitative radiancy to the subordinate planets, the Peers and the Commons, and hath exhibited the whole sphere an object of the highest admiration and wonder, yet hath not even he denied an over-ruling omnipotence: he examines the position of Sir M. Hale, and supposes that a misgovernment may fall upon the Parliament, and * appeals “to the prudence of the times to provide “a remedy according to the emergency.” Sir M. Hale must have intended, by what he forbore to express, that the subjects are in such case without remedy, but by out-of-door exertion: Judge Blackstone must have meant by the prudence of the times, the prudence of the people; otherwise both are unintelligible, and the security of the people, for right and good government, rests in the discretion of their betrayers and oppressors; in every emergency they are irreparably undone.

In any other system of Government ever yet framed, it might perhaps be questioned,

* 1 Blackstone, 245.

whether

whether such a supremacy be the right of the people? When an Aristocracy, a Monarchy, or a Democracy, is once established by the people, they have fully and finally exercised their natural authority; if the Prince, the Nobles, or their leaders, act afterwards repugnant to the common weal, if their Governors become their tyrants, yet are they without resource or remedy; for when they appointed the Government, they departed with their whole power; and however they may be injured, oppressed, or tyrannized over, they must charge the evil to their own account, and wait some fortunate conjunction of circumstances; till their Masters, drenched in tyranny and intoxicated with power, and debauched with effeminacy, are careless and secure, they must not dare to struggle from the yoke, and then the justice of their exertion can only be determined by success, which, unless they can command, their having deserved will avail them nothing. But, in England, the case is totally different. The mixed government of England is imperfect, unless every part whereof it is compounded be in itself complete; it cannot be perfect as to its monarchical and aristocratical compositions, and only qualified in its democratical. To avoid tumult and confusion, the people wisely ordained, that the democratical authority should be

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exercised by representation, contenting themselves with the superintendency of a principal; they know that their representatives cannot by any possibility oppress, injure, or encroach upon the rights of either of the other branches of the Government, and that the rights of the people must be secure against the Prince and Peers, unless through the treachery of their immediate trustees, and therefore, that if the freedom of the State shall at any time be endangered, every branch of the Government must combine; and in such emergency, they claim of common right a general coercive authority over the whole; over their representatives as principals; over the other branches as accessaries. This right of supremacy, as it would be extreme folly in the people ever to have resigned, it would be extreme absurdity to question; for it was not in the power of the founders of our Constitution to have commissioned any man or set of men with an uncontrollable authority over the life, person, and estate, even of the conventionor himself, much less of his family and descendants; for seeing a man cannot dispose of his own life as he pleases, so neither can he dispose of the means of preserving that life; and as liberty is the preservative of both life and property, he cannot depute to any other a power to lessen it in any degree; no law of society,

society, contrary to the Divine Law, is binding upon any man; the law which should command any man to kill another who was free from fault, ought not to be obeyed: a law which should empower any officer or officers to imprison, or to rob a number of unarmed, unoffending citizens, it would be criminal to submit to: what would be an offence against the Divine Law by one man, can receive no sanctification from being the act of a multitude, by what name soever they be distinguished---Lords, Commons, Parliament or Kings. The voice of God in such case calls aloud among the people to provide, "*Ne quid detrimenti respublica capiat,*" and neither privilege nor dignity, pre-eminence nor authority, can deter them from paying obedience to the sacredness of the command.

The people of England are now so called upon; they obey; the manner of their acting cannot alarm any man in the kingdom, otherwise than as the Judge's trumpet doth the conscious criminal; they riot not in arms, to the hindrance of public justice, or the public peace; they troop not round the Houses of Parliament; but with that decency and good order which becomes subjects, and that firmness and intrepidity which becomes Englishmen, they call upon the Parliament, they represent their grievances, those disorders in the Government,

which, if continued, must end in the ruin of the Commonwealth. The most strenuous advocates against the people do not disapprove of the petitions; they pretend to be convinced that reformation is necessary; but it is the insidious approbation of a Sultan, which flatters the mistress and the minion he hath predetermined to disgrace, which would make the friends of the petitions less watchful and less earnest; whilst these men pretend to approve of the petitions, they are vociferous against Associations and Committees of Correspondence; they disregard the buzzing of the bee, if they can secure themselves against its sting; they know, that were it not for Associations and Correspondence, the petitions would lie harmlessly on the table, "for the perusal of the Members." Secure of a majority, the Minister will permit speeches in favour of the petitions; his minions too shall encomium upon them; but when the friends of the people have run out the tether of debate allotted by the Minister, they shall be suddenly silenced by the vociferation of "Question! Question!"

Men advanced in station, after some time, forget that they owe promotion to any one. Individual consequence is allied to abused power; it soon becomes the refuge of the offender. A Member of Parliament, hack-
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nied in political sin, grows confident that he is not a representative of the people ; if he shall deign to say a few words on the subject, he will rise with great deliberation, his countenance consequentially composed, indignation in his eye, and lunacy on his tongue ; he will tell the House, that the petitions may be received as the prayers of the people ; he will admit that the people have a right to petition, to beg, but that that House also hath a right to answer them like beggars ; but, Associations and Committees of Correspondence---what ? A dictatorial power out of Parliament. Is that House to be dictated to by a mob ? If such Committees are attended to, the very foundations of the Constitution are broken up ; all order and distinction shall be overborne ---the people ? they may, perhaps, instruct their representatives, but they must not presume to command them----and after a large cable of such jargon is run out, the frenzy will evaporate in “ Question ! “ Question ! ”

The people say, that this is something like the right reasoning of a madman ; he supposes that the House of Commons is the Parliament, that he himself is the House of Commons, and that he is virtuous and uncorrupted. The reply of the people is short, that the House of Commons is corrupted, that their orator is a placeman, a pensioner,

pensioner, a contract-jobber; that every letter in his speech is priced; that he and his fellows have sold the liberties of the people to the Crown; that they have wholly transferred the legislative power into the hands of the executive magistrate; that the weight of the people is taken out of the political scale; that the people are resolved to restore the balance, and to that end will make their voice heard throughout the kingdom.

That the power of the people ends when they suffrage to Parliament, is a maxim very inconsiderately adopted by many writers on the Constitution of England; but its sole foundation is the authority of such writers, principally foreigners. The revolutions in England evidence that such a maxim is not consistent with facts; the nature of the Constitution proves it to be inconsistent with the public security. Human wisdom cannot construct an universal barrier against human passions. If ambition be denied entrance at one door, it will find or make another; whether its staff be prerogative or influence, it will support itself a great while; whatever be its means, it will find bodies which cannot resist its impulse; if the founders of the Constitution had provided only the ordinary cheques on that ambition, the King, the Lords, and the Commons, each against the other, England would long since have been undistinguishable

distinguishable from other Monarchies, or other Republics; her first revolution must have been from liberty to tyranny, and in every succeeding one she could only change her master; a further cheque is therefore provided---the power of the people in an Out-of-door Parliament. The history of England, as well before as since the Conquest, furnishes many instances of revolutions, in every one of which the Government was dissolved, but never one in which the Constitution was irrecoverably lost, and but one in which it was shaken. The spring, by the force of which the Constitution of England hath withstood almost "the wreck of matter, and the crush of worlds," is, the power of the people paramount to the appointed Government. It is that which drew six Sceptres of the Heptarchy to the hand of Egbert, and against the invasions of the Dane and the Norman, preserved to the people the birth-rights of Englishmen, which withstood the usurpations of Stephen, and the convulsions of Maud, the fury of John, the artifice of Henry III. the insanity of Edward II. and the intrigues of Isabella, the waywardness of Richard II. the childishness of Henry VI. the avarice of Henry VII. the tyranny of Henry VIII. the almightiness of James I. the insincerity of Charles I. the fanaticism of Oliver, and the

the bigotry of James II. If the power of the people existed and ended in an instant, in the bare nomination of men to Parliament, stability could never have characterised the Government of England; then, with ease and impunity, might the servant hired for years, assume to be the master of his master, and say he would hold his employment for a longer term, against the consent and interest of his master, and rob, and plunder, and fire his house, and declare that he and his fellow-servants were the only judges, whether the master had authority to hire them, and whether they themselves had acted honestly or not? Then might they laugh in their masters faces, and tell them their only remedy was not to elect them again---when they pleased to give an opportunity.

Whilst the people clearly know their own power, they carefully advert to the danger to be apprehended from the exercise of it; they know they are most liable to be imposed upon by the specious artifice of predetermined apostacy; that whilst they exercise their democratical authority in an assembly of the people at large, they are exposed to the miseries, misfortunes, and mischiefs, which they meant to guard against by parliamentary representation; that if they shall suffer matters to remain long unsettled, they shall unavoidably fall
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into the snare; the powerful policy of Cromwell is ever in their view: the necessity of the time, which called upon him as a defender, the strict execution of his authority, the glory of England in his reign, the acquisition of Jamaica and Dunkirk to the demesne of England; all cannot lessen the horror of the suspension of freedom for a day in England, the people, therefore, resolved to act with firmness and celerity.

The history of England would be the dusty incumbrance of the library, were it not for the instances of the supreme power of the people with which it abounds. Soon after the death of Queen Elizabeth, arbitrary power shewed itself undisguised in England, spoke its own language, told the people, "That as it was blasphemy and prophaneness to dispute what the Almighty could do, so it was presumption and sedition to dispute what a King might do in the plenitude of his power." The furnace of the Star-chamber, and the beauty of Carr and Villiers convinced the people the words were not air---but Sir Edward Coke, who once called the Duke of Buckingham "the Saviour of the nation," could not protect the Duke against Felton, nor Charles against the people. The Crown only was hereditary to James; the measures of James were hereditary in Charles; he considered the people as his property; he

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ruled,

ruled, he tyrannized, he mocked them; he added the insult of a fool to the passions of a tyrant; he called them to Parliament--- they accused the Duke---he dismissed them; he rejected their money, because they offered him their counsel; he called them again---they coupled grievances with the Duke---he turned them off; they were servants out of place---he called them a third time---they would still be the servants of the public---he bad them get again about their business---a fourth time also--- and then for twelve years he did not trouble himself about them---he yet found money---he raised his rents, against his own covenants---by the advice of his Ministers, he made all the titles of the kingdom defective---seized for the forfeitures---graciously regranted for enormous fines, and at quadruple rents---he forced the yeomanry to buy honours at his sword blade; he openly picked the pockets of the people, and called his legerdemain, benevolence; he commanded them at last to build ships upon dry land: this was the triumph of a Pharoah, and the Israelites cried out. Hamlden, like another Moses, stood before him, and told him he must let the people go. The King's heart was hardened---he called forth the magicians of the land, the suborned Judges of England, to pronounce, that, in times of necessity, the King might

might levy taxes, without Parliament, and that the King was the sole judge of that necessity. Hambden was soon after sentenced to contribute his twenty shillings towards the inland navy. The circle of glory round the head of Charles could not secure him against the clamours of the people. He summoned his Peers to counsel him at York---a Parliament was called---the people petitioned, the Parliament addressed the King---he palliated the conduct of a tyrant, with the sophistry of a Jesuit---they were vehement against his Ministers and evil Counsellors---he denied he had any---the Parliament bid him be cautious---that the windows of Heaven were opened against him---that the fountains of the great deep should be broken up---and that unless he repented and reformed, the flood must assuredly overwhelm him. He mocked at the prediction, and at the ark the Parliament was building---he fell a victim to the power of the people.

The misgovernment of Charles ended not when he called the Parliament of 1640: he, in that Parliament, and as King, betrayed the trust of Royalty; he surrendered his necessary prerogative of dissolution to the Houses; he enabled them to destroy the liberties of England, which they prefaced with his own public execution; a just and a necessary sacrifice to the

violated trust! a sacrifice which neither the ridicule of *Butler*, nor the delicacy of *Hume*, can ever obliterate from the memory of Englishmen! This instance the people consider with the severest circumspection. From the time that the King shared his executive authority with the Legislature, he separated his Royal from his political capacity, and the people afterwards carried that distinction to the block. When Charles united the executive and legislative powers, he dragged the key-stone from the Royal Arch, which suddenly fell in, and not crushed only him in the ruin, but violently demolished the Crown of England. The people know, that if they again hazard the dissolution of the Constitution, by the union of the legislative and executive powers, how insecure shall be their liberties---they, therefore, never will lose sight of this very awful instance---British Kings will do wisely to think how dangerous it is to provoke a spirit which is inwrought in the heart of every man in England, and which every hand will subscribe to and authenticate.

Although the people are most jealous of their representatives, yet will they carefully guard against any infringement of the Constitution, by any branch of the Government. If they cannot so effectually guard, what advantage have the subjects of England

land over the flaves of the Mogul? The King and Peers are personally parties to every law; readily, therefore, may the Aristocracy bend to the Monarchy, or the Monarchy suffer itself to be swallowed in the Aristocracy. With great facility may both unite to beat down the Democracy, if the 558 Commoners, who represent it, be considered the whole body of the people. In that the representatives are not, nor can be considered, consists the just security of the liberties of England: the representatives are the Ambassadors of the people to the great Council of the realm: the people must be bound, of necessity, by every act of theirs, which is not inconsistent with their credentials; but whether through weakness or treachery, the Ambassadors abuse their delegated trust, the Potentate, whose legates they are, is justified not only in instantly recalling them, but in declaring war against that State by whose perfidy they were imposed on. The chain of Government in England has two links; the King's Coronation oath to rule and govern according to law; the oath of the people of allegiance to the King. Little advantage have the people from the Coronation oath, if, on the violation of that (and the hypothesis is not paradoxical) the people are inviolably bound by theirs. A Chaplain of James II. told the murmuring people, " that

“ that King’s promises were free dona-
 “ tives ; that he only had the power over
 “ them, and might at will retract them.”
 The subtlety ruined the King, and made
 Doctor Cartwright a Bishop.

Chief magistrates, whether Princes,
 Peers, or Commoners, being originally
 appointed to the presidency over others,
 on account of superior excellence, their
 electors should so long pay them that reve-
 rence and duty, as they themselves, by hold-
 ing up to those perfections, convince them
 they were not mistaken in their choice.
 When Princes deviate from those excellen-
 cies, the very cause of their election, men
 are no longer bound to its effect, that spon-
 taneous deference and respect, which prove
 at once the worthiness of Prince and Peo-
 ple. If the people fail in their duty, the
 Prince has right and authority to correct,
 to punish, to compel them ; nay, the peo-
 ple have themselves consented, that disre-
 spect to a certain degree shall be answered
 with the life of the offender. Whenever,
 on the other hand, the Prince becomes with
 justice distrusted by the people, he cannot
 call their complaints faction, their resent-
 men disobedience, nor their action treason.
 A wise Prince will discover his error ere it
 be too late, he will not scruple to acknow-
 ledge it ; he will, like Edward I. give in-
 stant proof of his sincerity, by removing
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the cause of offence; he will, with out out-of-door conviction, be satisfied that protection and allegiance are correlative terms; that both must exist, or neither; that one cannot be taken, and the other left*.

The King is in the government, what the pendulum is in a clock; which, by the exactness of its vibrations, preserves regularity in the whole machine; without it, the work is at a stand. Of such consequence are the rightful actions of a Prince; he it is who directs and secures the respectful obedience of his subjects; gives motion to their actions, and preserves the due relation between them. Let him not accuse them, if they are irregular in their conduct; their regularity is governed by his. The people are the gnomon of a dial, whose shadow is guided by the Sun. Monarchial govern-

* It is evident from the ancient tenure of lands in England, that the principles of the English government above insisted upon are just. It is notorious, that those tenures were deduced from, and regulated by, the tenure of the Crown in England, even subsequent to the Conquest. An ancient author thus expresses himself, concerning the reciprocal fealty of the lord and tenant: "Nil facere potest tenens propter obligationem homagii, quod vertatur domino ad exheredationem, vel aliam atrocem injuriam. Nec dominus tenenti è converso, quod si fecerint dissolvitur & extinguitur homagium omnino, & homagii connexio & obligatio, & erit inde justum judicium cum venerit contra homagium & fidelitatis sacramentum quod in eo in quo delinquant puniantur. S. in persona domini quod amittat dominium, & in persona tenentis quod amittat tenementum." Bracton. fo. 80.

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ment was first introduced among men to avoid the disorders and inconveniencies resulting from repeated elections of the chief magistrate, and to bind one man in the empire, by the noblest principle in nature, Gratitude, to be attentive to the welfare of the people, by whom he was so peculiarly distinguished. It cannot be conceived, that rational beings would put themselves in a worse condition by such an election, than they were before; that they would exchange the casual inordinancy of collective consultation and action, for certain, settled, systematic, hereditary oppression. Yet this the people of England have done, if every magistrate, by what name or rank distinguished, be not accountable to the people for his political conduct. It cannot be that the people at once invested their Prince with powers to protect and to overthrow their liberties. If then the Prince shall, at any time, contrive against the public good, he acts inconsistent with the power vested in him by the people, and must necessarily be accountable for his misrule.

The objection of every sycophant is, Who are to be judges on the occasion? Who, but the people? Who but those from whom the commission flowed can decide upon the due execution of it? No part of the consideration of the grant of Sovereignty moved from the Prince; the protection

tection of the people and the due execution of the laws they before lived under, was the sole cause of the grant on the part of the people. It is as to the Prince a subsequent condition. The estate must be avoided on the non-performance. The Prince yielded not any part of his natural liberty for the security of his political. And it sounds oddly to say that the Commissioners of the Prince should in such an emergency be his Judges, or that any tribunal but the people in their General Assembly, in their Out-of door Parliament, should judge him, or that he should not in any case be judged of any.

After the execution of Charles I. the spirit of liberty evaporated in a fanatic outrage and factious ambition, which raised a politic usurper to the supreme power. All the succeeding troubles in England, and the necessity which compelled the people at length to raise to the throne a man destitute of principle, gratitude, probity; dishonest, insincere, tyrannic, were due to their want of circumspection on that occasion: to the want of association and correspondence, of unanimity and uniformity of counsel and action. Afterwards in the reign of Charles II. the bill of exclusion, after it had made way through the House of Commons, miscarried in the Lords for want of association and correspondence. To the want of asso-

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ciation and correspondence, the people attribute all the evils arising to the State from the pretensions of a foreign Papist to the throne. To the same cause, that most unconstitutional and unwarrantable example in the reign of George I. of a Parliament, returned by the people to serve for three years, electing themselves for seven; and the subsequent illegal assumption of all succeeding Parliaments against the spirit of the Bill of Rights, a bill framed by the people in an Out-of door Parliament, and against the letter of the statute 12 William III. to the want of association and correspondence at that day the people attribute the necessity of associating and corresponding at this.

But the utility of association and correspondence depend not singly on negative authority. The people owe to association and correspondence, that their monarch is not now a Papist: that a Kirk does not now give law in the field, and a Jefferies marshal on the bench; that the Prince of Orange did not return to Holland and leave England to the mercy of King James; that the Revolution of 1688, can now be produced in proof of the power of the people of England; that did the people know but the association and correspondence of that day, it might perhaps be pretended that the associations and correspondence

spondence of this day are not justifiable against the faithlessness of Parliament.

Again, the people associated and corresponded; they know the enemy they have to combat with will not be cajoled; he must be terrified; that simple prayer will be fruitless; that to such this Parliament will give them a log for a king, who shall mock them with dullness, obstinacy and stupidity, or a stork, who shall stop the turbulent croaking of his subjects by devouring them. They, therefore, are resolute to convince this Parliament, that their miseries will not bear to be sported with; that this Parliament, adverting to the calamities occasioned by the lethargic and wicked inattention of past times, may, by a patriotic activity, prevent them at the present; that Parliament may know, that the people consider the equilibrium between the component parts of the government, as the basis and constitutional security of their liberties; that they will interpose as men, to prevent preponderation by prerogative, corruption, or influence.

The collected strength of the people is converged in the Parliament. In every of the three estates certain prerogatives are vested for the public good; prerogatives which set them far above the level of the people, but without which, the independency of any could not for any time be preserved: in order to which, each estate

is absolute, as against the others. The Commons cannot, without endangering the public liberty, interfere with the prerogatives of either of the other two estates. The King and Lords are as fully restrained with respect to the Commons and each other. Thus far, and thus far only, is absoluteness, ascribable to any or to all the estates of Parliament; without hazarding the Constitution, none of them can pretend to a greater, or not insist upon so much. It was the intention of the founders of our Constitution to secure it against all the governors; they set each as a jealous guard upon the other. When Cromwell formed the design of Sovereignty, he first made the King, afterwards the Lords, and last the Commons odious to the people. Liberty was then drunk in England; and, in the fury of her frolick, declared Cromwell her Protector. She soon heavily repented her rashness; she told the people that, "Kill-
"ing her Protector would not be murder." The consequence of debauchery is more extensive than foreseen. Liberty was not perfectly awake, even at the Revolution. The out-lines of the Constitution were retraced; the parapet of Liberty was raised by the Bill of Rights, but like the first walls of Rome, so slightly, and so low, that any daring intruder, might readily, in mockery or malice, leap over or break through it.

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The great imperfection in the settlement at the Revolution was, that the people contented themselves with declaring their rights; they did not provide any penalty against the infringement of them; they did not define the prerogatives of the Prince, or declare to what end those prerogatives were his; they left it in the power of future Kings, who should be weak enough to attend to evil Counsellors, to overturn the whole structure, to undermine, to contrive against it; they left a necessity for more clearly explaining the office and duty of a King of England.

The King is the arbiter of war and peace; the Generalissimo of the armies of England; the High Steward of her revenues; the head, beginning, and end of her Parliament; the publisher and executor of her laws; the fountain of her justice and her honours---his person is sacred---he can do no wrong---he is immortal---he is all-powerful. These prerogatives and attributes appear inconsistent with that liberty which is the boast of Englishmen, and would actually be so, if the reason and spirit of them were not found in the nature of the Constitution of England. The founders of the British Government discovered, that a permanent form might be, as indeed it can only be, by providing, as far as human wisdom can provide, against the possibility

possibility of the King's ever interfering in the Government, otherwise than in his political capacity; the attributes of a King of England are not otherwise reconcileable with human nature. Human wisdom cannot erect a barrier which shall hold perpetual against nature. Obstinacy, folly, perverseness, and every passion incident to humanity, is found in man, whatsoever be his situation, whatever be his part in the theatre of life: even in England, Princes have been found who disproved the political truth of the principles of Royalty--- Charles I. and James II. are glaring instances against the immortality of the Royal character---the Restoration and the Revolution evidence the vacancy of the Throne, by the execution and banishment of the very King himself. Almost every King since the Conquest is an exception to the generality of the policy, in one instance or another.

The King is all-powerful, or, as Judge Blackstone * expresses it, "absolute," the meaning of which is not, as the whimsiness of one James, and the bigotry of another, understood it, and as a writer, under another tyrant, has expressed it, that he is † "*Vicarius, et Minister die in terra,*" and that "*omnis quidem sub eo est, et ipse sub*

* 1 Blackst. 250.

† Bracton. temp. Hen. III.

" *nulla,*

"*nullo, nisi tantum sub Deo.*" Such an interpretation is not consistent with common sense, much less with the common law, and common security of the Government. The common law justly rescues the almightiness of the Prince from the idolatry of the subject. The same expounder, under Henry III. explains himself; he says, "*Rex debet esse sub lege,*" and gives this striking reason, "*Quia lex facit regem.*" So that in England the King hath a superior---the law. The law doth not, indeed, suppose a case wherein the King can become the object of its cognizance, but contents itself spiritedly to pronounce, that he ought to be "*sub lege;*" and to declare, that the law "*facit regem.*"

"The King can do no wrong;" a fiction, though not applicable to any human constitution, inseparable from the royal character. The law has divided the King's capacity into two parts, his legislative and executive; and in either acting, the laws scruple not to pronounce, that the King can do no wrong; his power, as a legislator, is confined to assenting or dissenting to the laws propounded by the other branches of the legislature. He cannot propose any law; so that whilst his executive and legislative capacities are distinct, it is not possible that he can do wrong, unless as Charles I. by not withholding his assent to a law
confederated

confederated by the Lords and Commons, from which the destruction of the Constitution must flow. However, as that Prince fell a martyr to that crime, the precedent is not likely to be followed : with equal reason the law declares, that the King can do no wrong in his executive capacity. As the executor of the laws, the King can do only what the laws have previously ordained, acting as King, he cannot walk out of the verge of the law ; the law wisely presumes what is unlawful to be impossible ; its language is, * “ *Nil enim aliud potest Rex, nisi id solum, quod de jure potest.* ” Before, therefore, the Prince can be justly charged by the people with any breach of his duty, he must cease to be King, that is, King according to the laws of England.

The law hath wisely guarded against that confusion which must arise from the uncertainty of distinguishing between the King's natural and political capacity, considering him only in his political ; hence it is, the attributes of Divinity cease to be blasphemous or prophane. In order that the King may rule with justice and judgment, the man is wholly unlooked to by the law. The law doth not conceive that the King will ever suffer his private interests

* Bracton, lib. 3, tr. 1, c. 9.

or private passions to interpose in the administration of the government; or that the man will be the master of the magistrate. Whilst, therefore, the King knows and supports his own rights, he will find the law a willing and a powerful protector; but if a King of England shall forget himself, and disregard his royal dignity, and suffer his natural to usurp upon his political character, the law is then called upon to prove its supremacy, to convince him that he is subject to the law, and that the law it is which made him King.

“* The founders of our monarchy might have made it elective, if they had thought proper.” The people wished for that form of government in which they could best enjoy the quiet of society. Against periodical tumult and bloodshed, they provided an hereditary monarchy, subject to limitation by Parliament and the people. “† This hereditary appointment has been acquiesced in by general consent, and by degrees ripened into common law; the very same title that every man hath to his own estate. Lands are not naturally descendable any more than thrones; but the law has thought proper, for the benefit and peace of the public, to establish hereditary succession in one as well as the other.” Thus is the

* 1 Blackstone, 192. † Ib. id.

law of the Crown laid down by a late learned expounder; and hereupon is the doctrine here advanced founded. Incident to the grant of every private estate, move it from whom it may, is a condition that the proprietor commit not felony, which works a forfeiture of his very right of inheritance to the King, whom the people have appointed the depository of such property as so reverts to the common stock. Unaccountable and repugnant to reason would it have been to have appointed to the Crown all forfeitures for violation of the laws, and to declare that the King himself should be exempt from all forfeitures for violation of the laws, how flagrant soever; to say that the person entrusted with the due execution of the laws hath, by law, a privilege to infringe and trample them with impunity. The condition incident to the tenure of the Crown is expressed in the strongest terms in the Coronation Oath, and is called by the lawyers †, "The duties incumbent on the King," which may be summed in this, that he govern his people according to law. As forfeiture works such a corruption of blood, that the heir cannot inherit through his offending ancestor, the heir of a Prince, who had forfeited his crown for violation of his contract, never succeeded his ancestor by right of inheritance; but by the

† 1 Blackstone, 233. ch. 6.

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appointment and free election of the people: thus the son of Edward II. was made King before his father's death: the son of John of Gaunt was elected upon the dethroning, and in the life-time of Richard II. Edward IV. was elected upon the deposal of Henry VI. Charles II. on the expulsion of Richard Cromwell, and the Prince of Orange on the expulsion of James II. And in the three last instances also the preceding Sovereign was living. On such occasions it has ever belonged to our ancestors to determine what would be most likely to conduce to the public security. What they did, our posterity and we ourselves must do, if the necessity shall again arise*:
 “ for whenever a question arises between
 “ the Society at large and any Magistrate,
 “ vested with powers originally delegated
 “ by that Society, it must be determined
 “ by the voice of the Society itself: there
 “ is not upon earth any other tribunal to
 “ resort to.”

Poor was the resource and pitiful, and unworthy of a great people, when they declared that this original contract had been violated by the Prince, to declare that his abdication occasioned the vacancy of the throne. It was not his desertion of government, but his misgovernment, the

* 1 Blackstone, 212.

breach of his covenant made with the people at his coronation, the violation of the original contract, which induced the vacancy of the throne. If he had ruled his people according to law and to his oath, and had left the kingdom as secretly as his father and the Duke of Buckingham in the Infanta-wooing, his people would not have deserted him, or declared his throne vacant, or filled it with a stranger. The English then dared do that, which they dared not declare their mind in doing. They expelled their offending Sovereign, and declared he had run away from them. From such false delicacy serious ills proceeded: had the people spoken plainly on that occasion, had they declared that for his misrule they had expelled him, the offender had never dared, by returning to any part of his dominions, to persuade the people that he had not abdicated the government, that he had not derelicted his right of royalty, and that they were not therefore released from their oath of allegiance to him. Nor but for the colour of the vote of the 7th of February 1688, would Lewis XIV. have partnered in his fortunes. The grandson of Henry IV. would otherwise have been content with a palace at St. Germain's and the blessings of the Jesuits. Were it not for this unmanly vote, a Commentator * on the laws of

* 1 Blackone, 245.

of England would not in the eighteenth century declare, that, "an endeavour to subvert the Constitution of the kingdom by breaking the original contract between King and People, and a violation of the fundamental laws of the kingdom," would not be sufficient to put the law of redress into the hands of the people, unless the offending Prince should also withdraw himself out of the kingdom."

Equally poor and pitiful, and repugnant to the dignity as well as interest of England is the policy, which interposes a Minister, a creature unknown to the laws, between the people and the Prince. This perverse policy hath been the source of many evils to this country: it is alike fatal to Prince and people. It arms the Prince with a false security: it exposes the people to second-hand oppression. It is a perverted equity which shelters the man who lifts the firebrand to the roof, and executes him by whose counsel he was criminal. King, Lords, and Commons, are the only Governors known to the common law of this Realm. This ministerial excrescence is not much older than the reign of James I. and was the curse of this country, of that Prince, and of his son. By the counsel of Somerset, was Overbury falsely committed to the Tower, where his murder was accomplished

complished by the wife of Essex, and that * imprecation forced from the King, which supposition conjectures hath scarcely been fulfilled by the fates of his son and grandson. By the council of Villiers was the same King seduced to let the Prince go privily to Spain, which sowed the first seeds of that distrust and discontent, which afterwards distempered the kingdom. By the counsel of the same Minister, that Prince was induced to exercise prerogative against law, and to dissolve his Parliaments for daring to consider the Minister as responsible for the misconduct of the Prince: the counsel of evil Ministers during that whole reign, has detestably blackened the page of English history. The reigns of Edward II. and Richard II. produce execrable examples of the minions of Princes, and of the unremitting hatred of the people towards them. This antipathy became a zeal rooted in the politics of every man in England. Princes late endeavoured to avert it by changing the minion for the Minister: and some Princes having sacrificed their fa-

* When it was told King James I. that Sir Thomas Overbury had been poisoned in the Tower, he was heard to exclaim vehemently "May the curse of the living God attend me and my posterity to the latest generation, if I pardon any person who shall be convicted of this murder." Franklin, the apothecary, and other underlings were convicted and executed: but the Earl and Countess, though also found guilty, received the King's pardon. State Trials, temp. James I.

vourites to their own pipue, and the people having torn others from the breast of their protector, the dexterity of the Minister hath at length wormed him into official consequence. The weed hath taken root in the Government itself; it hath so bedded in the soil as to draw nourishment from the wholesome stalks, which inhale the poison oozed from the infected root, and seem to owe an unnatural shelter to the noisome exotic. A phantom of royal security; a blight, that nips the blossom and the fruit. The people resolve to pluck away the tares; they trust without injuring the wholesome blade. They will convince the Minister that his imagined political importance is no greater security to him than the naked favour of Princes was to a Gaveston, a Spenser, and a Mortimer.

If it be impossible that a Prince can separate his political from his natural capacity, and that he can do no wrong, either as a King or as a man, great indeed hath been the presumption of the Parliament in animadverting upon, complaining of, and remonstrating against * those acts of royalty which are properly and personally his own. If the King can do no wrong there can be nothing to redress, of consequence, nothing to remonstrate against, nothing to com-

* Blackstone, 247.

plain of. But this privilege of thus freely canvassing the acts of the Sovereign belongs of right to the people, and through them to their Representatives in Parliament. The possibility of the King's doing wrong, otherwise than through the medium of a Minister, is conspicuous in our antient records, nor is it confined to speeches and messages in Parliament*. King Henry VI. fined a man for refusing to execute the office of Sheriff, to which that King had appointed him contrary to law: the Judges scrupled not to tell him plainly that the man was liable to no fine for disobedience, and
 “ that the King did an error when he made
 “ a person Sheriff that was not appointed
 “ according to law.”

“ The King is the fountain of justice :” not that the King's will makes the law, “ *Rex debet esse sub lege,*” but because through him, as Sovereign, the subject enjoys the benefit of the law ; he is “ *Capitales justiciarius Angliæ ;*” he may, therefore, direct the law through as many conduits as he pleases ; he may erect new Courts of Justice, but they must proceed according to the established laws of the land. The people did not cry out against and abolish the Star Chamber, and Court of Requests, under Charles I. in denial of

* 2 Inst. 559.

the King's power to erect as many Courts as he pleased, for the distribution of justice, but because he perverted those means of right into instruments of most gross and violent oppression, and made them the footstools of tyranny and ambition. Those demands of the people were not encroachments on the prerogatives of the Prince, but endeavours to define more exactly, that which was before vague and undefined, through the short-sightedness of their ancestors, in not foreseeing, that that which was salutary in the hands of one Prince, might become poisonous and pernicious in the hands of another. Distressful emergency forced the people to bestir them; they dared to try their strength against the giant, and found him vincible--- they leaned from the rock of their liberties, and, against the waves and the storm, pierced the monster before it had made way to destroy the beauties of the Constitution.

Our law books abound with decisions, wherein absolute sovereignty is ascribed to the King. Few are the judgments wherein the King is not an exception to the law itself. We are taught that, “* That is law in the case of the subject, which is not law in the case of the King.”

* Finch, l. 85.

Whence had the absurdity its source? whence was the King persuaded to set himself above the law, to which he solemnly swears he will conform his rule, and which so expressly declares itself his sovereign? From the warped opinion and illegal complacency of his Judges, who holding their offices "*durante bene placito*," cringed to their masters, and made the law bend to his necessity and caprice. By such repeated uniform decisions, a system of jurisprudence was established; a structure of law was gradually, insensibly erected, which should hold only in the King's case: no wonder then, that in the reign of Henry the Third, we find Bracton, contrary to his own principles, and to his knowledge in the law, qualifying the King's subjection to the law, and declaring that the King had no superior, but only God. No wonder that succeeding Princes of more learning than wisdom, and more tyranny than learning, pedanting over the antient authorities of the law, were eager to grasp a phantom, to usurp a power they had neither right nor prudence to exercise, to imagine that their persons were sacred against law, and against demerit. The Black letter in which this doctrine is enveloped, became the hemlock of British Sovereigns; and though some Princes have had wisdom and virtue enough to condemn the diabolical experiment, yet, whilst

whilst it continues a state-implement, the best willed monarch shall hardly escape the reputation of a Caligula*.

“ The person of the King is sacred.” Wherefore does the fiction bring more respect to his virtue, or render his vices less hideous or more free from reprehension and punishment? Is the absurd aphorism necessary to these great ends? Nothing less. Be virtue the basis of the throne, it shall stand as an house founded on a rock; the rains of foreign troubles may pour on, the flood of faction may beat against it, yet shall it not be moved. Nothing can disturb the quiet of the Prince, or endanger his security; the more numerous his people, the firmer his defence: each subject is a satellite of his Prince’s safety; mutual in their interests, their desires are mutual to promote each other’s happiness; the affection of his people are a brazen wall for the protection of the Prince. Sheltered under his parent wing, his subjects will pay him the ready duty of children; they will render unto Cæsar more than Cæsar will call his; but in vain doth the tyrannic Prince retire for shelter within the penetralia of Divinity; in vain endeavour to elude the sharp-sighted eye of jealousy; his best ac-

* He wrote his laws in a very small character, and hung them on very high pillars, to ensnare the people.

tions are viewed through a jaundiced medium. Restless, uneasy, apprehensive that every moment may be the last of their liberties, nothing can satisfy his subjects: his friends are their enemies, his enemies are nearest to their love; his success pains them; they consider it as the rivet of their fetters; he is ever watchful to gratify a craving thirst for power; they are ever cautious against placing any confidence in him. Miserable State! can the sacredness of his character shield him against the indignation of his people, justly roused to assert their liberties against him. If these attributes be really descended from on high upon a King of England; if they be really a participation of the Divine; if false prophets have not wound the magic round him, danger could never have broken through the hallowed fence; the chance-sent shaft of Tyrell had not found passage to the heart of Rufus; the intrigues of a wife would not have overwhelmed Edward II. Richard II. must have withstood the rebellion of a Bolingbroke; the innocency of Edward V. would have been protected against the cruel usurpation of a Gloucester, and the usurper against the Tudor. Though this grand Protector might have slept during the long troubles of Charles I. it would surely have been roused by the bigotry of James II. Since then, this fancied providence hath
ever

ever failed the heedless consider in his greatest need; since neither freedom nor tyranny, innocency or cruelty, piety or bigotry, hath hitherto attracted its tutelage, that Prince is unpardonably incautious, who shall hereafter trust it, nor is his imprudence less, who shall think the interposition of an ostensible Minister can perpetually satiate the resentment of a people justly inflamed against him.

To the misunderstanding these principles have many Princes owed their ruin. Environed with this fatal security have Kings defied their danger till driven to the shore, or to the block. Conscious of its malignity, have the people so often burst through it with violent indignation. Princes, in the hour of danger, like Baal's prophets, have implored but a little fire for a token, and, notwithstanding, no sign hath ever been given, notwithstanding the people have so often, and so successfully mocked the idol, and slaughtered the worshippers, yet do not Princes yet disregard the imbecility of their helper; an additional high priest is engaged, a Prime Minister, who sets before the image all the meat, and bread, and wine, in the land; and, because they disappear, persuades the Prince they have been honestly consumed, and proves the divinity of the idol by the greatness of his maw. But the people have, at length, found a servant to.

to stand before the King, who hath detected the footsteps of men, women and children, without number, and traced the public stores to the caverns and hiding places of the Minister himself. The people are now resolved utterly to demolish the idol, to convince the King, that under Heaven there is but one power he can confide in, the good affections of his subjects; they are satisfied, that however the sacrifice of Ministers may divert their vengeance, till the idol be for ever destroyed, it is "*inutilis & sine fructu labor?*" Many heads shall start in the room of the one cut, and the monster grow more terrible, till the trunk be effectually seared. New Ministers shall molt new calves to Baal, and Prince and people still be led astray. Whilst the Prince can reward their services, he will ever find men faithful instruments of corruption. Does the execution of his fellows prevent the highwayman from taking the road? Surely not. He imagines his own dexterity will bring him off, or haply he may escape his pursuers. When thus the plunder of perhaps a shilling will urge the robber to venture his neck, what will not the influence of high honours and dignities heaped upon him by the Prince effect, together with the spoil of a whole nation? especially where there is a strong probability of escaping punishment, and even detection,

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by a treacherous, corrupt majority, procured by sharing in the rapine of those whose conservators they were appointed. If a Sovereign of England may harass and oppress his people on the ground, that whatever is exceptionable in the conduct of public affairs is to be imputed to his Minister, and that he is not answerable for his misconduct, wretched are the subjects of that Prince! What a perversion of Reason! Whom did the people intrust with the executive power? Are they to call upon a stranger for the performance of a trust to which he was not a party?--- The King has a Privy Council to advise him in matters of State, not existing in the original Constitution, but rather approved of by side-wind statutes: not elected by the people, but appointed by the Prince: not mediators between the King and People the majority of whose voices he is obliged to obey, but his private friends, of whose counsel he may take what best pleaseth him; if these men are not responsible to the people for the conduct of the Prince, how much less so is a Prime Minister, a name created to gratify the pride of it's master*.

A Prince

** When the military tenures were in vigour in England, their spirit communicated itself to every order of the people: the same supremacy which the King could of right claim as Lord paramount, of every chief feudatory of right exercised
over*

A Prince more prudent than his ancestors and cautious from their catastrophe, may perhaps think he shall avoid it by walking in an unbeaten path, and may do indirectly what the others did barefacedly; he may dread the avowal of an arbitrary design, and use every precaution to protract the suspicion of the people; he may never have discontinued Parliaments; his reign may have opened with the most flattering prognostics of felicity---his personal disinterestedness and the independency of the judges---even upon the successor to the Crown; he may be able to produce the roll of Parliament as a warrant for every step taken in his reign: it is not, notwithstanding, impossible that his people may

*over his derivative feudatory: the same duties were incumbent upon him, the same services required by him. The qualifications and duties of the Prince may be aptly collected from those of the Dominus Manerii, and well warrant the principles above insisted upon. They are thus described by an ancient writer: " In omnibus autem, & super omnia, decet
 " quemlibet dominum, verbis esse veracem, & in operibus
 " fidelem, Deum & justitiam amantem, fraudem & peccatum
 " odientem, voluntariosque malevolos & injuriosos contem-
 " nentem, & apud proximos pietatem vultumque motibilem
 " & plenum habentem; ipsius enim interest potius consilio quam
 " viribus uti, proprio arbitrio: non cujus libet voluntarii ju-
 " venis minestræ vel adulatoris, sed jurisperitorum virorum
 " fidelium & honestorum, & in pluribus expertorum consilio
 " debet favere. Qui bene sibi vult disponere & familiæ
 " suæ, scire veram executionem terrarum suarum necessa-
 " rium erit, ut perinde sciat quantitatem suarum facultatum,
 " & finem annuarum expensarum. Fleta. Lib. 2. C. 65. 71.*

have

have as strong ground for murmur against him, acting under the authority of Parliament, as against one of his predecessors for acting totally without Parliaments: it is possible that the influence of the one, may prove as dangerous to the liberties of the people, as the prerogative of the other; that the people were less plundered by the one against law, than by the other under colour of law; that the influence of the one Prince upon his Judges was less worthy reprehension and exclamation, than the influence of the other upon his Parliament. If, when the suspicions of the people are roused to a thorough investigation, it shall be manifest that the great counsel of the kingdom is corrupted, that the majority of the men in Parliament is in the actual pay of the Crown, although there should not appear any overt act of treachery, they will be justified in resettling the Constitution; but if direct treachery shall be manifest, they will be unpardonable if they shall not make examples, which may strike terror for a great while. If the petitions of the people shall be slighted or stifled, they will justly grow clamorous; they will despise the hallowed security of attributes; they will push by with indignation the ministerial interposition, and call for justice and judgment against their oppressors. A war with

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France,

France, far from dulling their spirit, shall give it a glorious spur; it shall conjure to their view that æra of their story, when Britain was formidable, and her name honoured among the nations: they will see with fire the Prince of Wales set upon the Throne by the people, in the room of his misgoverning father; they will recollect his grandeur and recount his magnanimity; the fields of Cressy and Poictiers shall extend themselves before them; the laurels of the conqueror of France shall suddenly rebloom; they will eye with rapture the "*fleurs de lis*" in the British coat; and legalize their dormant title to the Crown of Philip--comparisons shall perhaps be avoided which could do no honour to their Prince---the clamour shall at length reach him in these alarming truths---that if the Parliament betray them they are helpless; that they looked upon their King as their parent---their friend---that they chearfully obeyed, cordially loved, and to their utmost honoured him---that they will not be tamely sacrificed; that they dare look their betrayers in the face, and meet even a Sovereign in the field; that if their Prince shall again erect a standard at Nottingham, he shall be disappointed at Hull; that Edgehill expectation shall be baffled at Naseby. The people trust, however, that England shall never again be the theatre for such a tragedy;

tragedy ; they confide in the justice, the honour, the personal virtues of their Sovereign, that in the reign of any of the house of Brunswick it shall not be necessary to separate the natural from the royal capacity, to distinguish between a good King and a good man. That his Majesty being sensible of the mischiefs to be apprehended to his people, will, with a fatherly benevolence, interpose his full power, his Royal care to prevent them ; that as treason dare not slander the title of the grandson of George II. to the crown of his ancestors, nor faction disturb his domestic tranquility, he will, as a Sovereign of that illustrious descent, provide that his people be not necessitated to vindicate their liberties against their Legislators ; they trust that, during the government of a Prince, in whose house the throne was established at the Revolution, those principles upon which it was granted to the Duchess Dowager and Electress of Hanover, shall not be oppugned.

Rightly did the celebrated Mr. Locke, a man acquainted with the true springs of government, declare it to be a dissolution of government, * “ When the executive magistrate employs the force, treasure, and “ offices of the society, to corrupt the re-

* Locke on Government, p. 2, f. 222.

“ presentatives of the people, or openly to
 “ pre-engage the electors, or prescribe
 “ what manner of persons shall be chosen ;
 “ for this is,” says he, “ to cut up govern-
 “ ment by the roots, and poison the very
 “ fountain of public security.”

If Mr. Locke had written at this time, he could not more directly have painted that influence and the danger of it, against which the voice of the people is now heard ; it is that influence which hath corrupted the representatives of the people, through the employment of the treasure, and offices of the society ; the ease with which this crime is perpetrated, makes it less regarded in the commission, and less attended to as to the consequence, and more eligible to the Prince, than the use of the falchion of prerogative, which hath so often cut him that wielded it. It is a state concupiscence, in which the pleasure of the parties sets futurity at defiance. The Minister is the pander of the Prince ; he knows the taste of his employer, and the complexions of those whose performance will please him. His intervention relieves his master from the pain of those scruples with which a first attempt upon chastity is ever attended, and the Mistress is introduced ready handled to the closet of the King ; secure of the honour he hath violated, he soon cloy ; the pander is again
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sent forth ; a new one is procured ; another and another---fresh presents keep the old in temper, and the King's council becomes a congregation of prostitutes ; the corrupt and the corrupted are to each other a mutual comfort and indemnity ; they find consolation in infamy itself ; they associate to plunder the public, and only by their intoxication and intemperance are the public ever put upon their guard against them. These state prostitutes know their security, that the executor of the laws having, through their artifice, gained an ascendancy over the Legislator, it is mutually their interest to screen one another. By means of this prostitute majority, the King commands the Parliament ; by this means he becomes literally the Prince of the Senate, and provides against the imputation of wrong. So far as vengeance is concerned, this commerce is worse than prerogative itself. Prerogative can screen the master only ; influence must shelter the Minister with him.

If this doctrine which would preserve the Prince and secure the Constitution, by asserting the right of the people over all their magistrates, seem alarming to Englishmen, it is owing to the dishonest perversion of the laws. The smiles of Sovereigns were poor atonement for breach of duty in Judges. The Sages, with an evil mind, planted a weed among the wholesome

some shoots of the common law, and heedlessness or design hath maintained its right to a portion of the soil, by arguments in themselves inconsistent, irreconcilable with those principles of the Constitution, on which its stability depends, and which disgrace the most excellent among the Lawyers. The Commentaries of Blackstone are, in this respect, an unintelligible jargon; through the whole of his first book, the liberty of the subject, and the immunity of the Prince, jangle most discordantly; they grate upon the understanding; and if our common observation did not find liberty in England, we are persuaded she could not exist in the atmosphere he hath fixed her in. It is not the use, but the security of freedom, which hath made the Constitution of England the admiration of the nations. If the Prince be in no shape accountable to the people, the Revolution of 1688 was against law, and King James's heir (whoever he is) is rightfully and lawfully entitled to the Crown of these realms, which even the most modern of those writers, probably, will not contend for. It was neither the merit nor the right of the Prince of Orange, which set the Crown upon his head; it was the personal violation of contract by his predecessor, and the common consent and authority of the people of England. That Prince did not acknowledge,

ledge, that the liberties enumerated in the Bill of Rights, were the birthright of the Parliament, but of the people of England. When the King and Parliament afterwards enacted those rights by law, neither did they exclude the people from their participation. But “ * in vain would rights be declared, in vain directed to be observed, “ if there were no method of recovering or “ asserting those rights, when wrongfully “ with-held or invaded.” If, when the Government is dissolved, the people cannot act, neither the Restoration nor the Revolution could have been accomplished. Under what authority did both Houses act, after Charles I. had forfeited his life, and James II. his kingdom? Not certainly under that of the King, by whose authority alone they could meet, according to the forms of the Constitution; since yet they did assemble, an higher power must be resorted to, and that power is the people--- for, as a Parliament, the two Houses had not any power, the executive power, “ † which is necessary to the very being “ of a Parliament,” being then annihilated. The Government of England, the Legislature, consists of three component parts; when any one is taken away, it loses its identity, and the remaining

* 1 Blackstone, 56.

† 1 Blackstone, ch. 2.

powers cannot meet under their former authority; and if not under that, they can never meet as the same Constitution, consequently there is an end of the former Legislature, a dissolution of the former government. That this is the fact, the abdication of James, and consequent settlement of the government evinces; however the death of Charles may be interpreted,
 “ * That abdication was conducted with
 “ temper and moderation.”

Judge Blackstone, however, contends, that the people have no such power, and his reasoning is extraordinary. He says,
 “ † That the conclusion of Mr. Locke,
 “ who he calls a theoretic writer, cannot
 “ be adopted, viz. that when the power
 “ entrusted by the people is abused, it is
 “ thereby forfeited, and devolves to those
 “ who gave it; because,” says he, “ this
 “ devolution of power to the people at
 “ large, includes in it a dissolution of the
 “ whole form of government established
 “ by that people, reduces all the numbers
 “ to their original state of equality, and
 “ by annihilating the sovereign power, re-
 “ peals all positive laws before enacted.”
 This is theory against theory, and the sophistical conclusion is best answered by facts; for as in natural philosophy, the best

• 1 Blackstone, 213.

† 1 Blackstone, 162.

systems are those which are founded in experiments and observation; so in this case, that theory must be most true, which is supported and proved by history. It may be said, the abdication worked only as a resignation. Why then that general association throughout the kingdom, which worked that abdication? Did not the people thus see their liberties endangered? Did they not perceive the necessity of interposing? Such associations brought to a birth the abdication. The Judge seems at some times to consider the King as the supreme power, distinct from the Legislature, sometimes the Legislature, and the King but as one of its component parts, as best suits his purpose; but that the Lords or Commons cannot work a forfeiture, without the King's being *particeps criminis*, the learned Judge agrees*. Whether the King, or either or both the Houses, apart, or in conjunction with the King, do wrong, the effect is the same---a dissolution of the Government. But it by no means follows, that thereby the chains of society, the positive laws, must be dissolved. The Government is the Parliament; without a King there is no Parliament; consequently without a King, there is no government. A time was when there was no King in

* 1 Blackstone, c. 2, in toto.

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England,

England, yet temper and moderation was preserved throughout the kingdom. A repeal of the positive laws did not thence result, the original state of equality did not thence arise. Crimes were not then committed with impunity; and as these consequences did not then follow, the dissolution of the government by the vacancy of the throne, it may, with authority, be pronounced, that the conclusion cannot fairly be deduced. The period was when there was neither anarchy and confusion, nor government in England; and as it is impossible to preserve temper and moderation without observing the laws, we must necessarily conclude, that the laws were then observed, although the Constitution was at an end; and if then, so may it be at any future period; for it is not reasonable to think, that those who put an end to the government, because one of the constituent parts had violated the laws; laws which they esteemed not only for their excellency, but because they were accustomed to be governed by them, becoming thereby a second nature; it would be a violence to good sense to suppose that those very people would erect a new Constitution, as if they erected any it must be---which should not be built of the very same materials, or that in the interim, they would demolish the design of the old one.

But

But it may be said, that in both instances the government was resettled, not by the people, but the two Houses. Is it possible, that all England did not, in both cases, see that there was no King? Can it be believed that the people were not watchful on the motions of the Houses towards supplying the vacancy? Is it bearable to imagine, that if the people did not approve of the person to be placed upon the throne, they would not have interposed, or that they could not have interposed with success? They did not interpose; they committed their power to the Houses; they were contented that Charles Stuart should succeed Richard Cromwell, and the Prince of Orange James II. Nay, it is still stronger; "*Qui non vetat, cum vetare possit, jubet*" --- the people commanded the Houses to elect those persons; the Houses obeyed the commands of the people.

Although the prerogative and influence of the Crown, unduly exerted, must produce the same dangerous effects, and tend alike to the dissolution of the Government, yet have the people much greater reason to be upon their guard against influence. Against prerogative, liberty is not hopeless---five hundred and fifty-eight peers of the people may oppose him effectually in the House of Commons---if that hope prove forlorn, the Lords of Parliament are ready to stand be-

tween her and the blow ; all the while the people themselves are on the watch ; and if they must act, will act effectually. But against the artifice of influence, liberty is destitute of hope. In the process of a glorious war, commenced in justice and progressed in success, a new King accedes to the Throne, amid the joyful acclamations of his people---a native---born in the land ---educated in their presence---queened to their content---from these circumstances, their allegiance is ten times bound to him ---their fellow subject, fellow citizen---their darling Prince. These are the rewards of the enthusiastic loyalty--the British realm, and British glory are dishonoured, by an insulting and perfidious peace---national honour stained, national advantages given up, national religion supplanted---the first fruits of influence. Left the scene should be hoped to change, the Ministers, by whose counsels these glories were atchieved, were continued and counselled on---the dismemberment of the empire was resolved on---as the prelude, Canada is *enpapisted*---the avarice of the Counsellors must be satiated with the money of the colonists---that source fails ---the pockets of the English are to be emptied---first to pay seven and a half per cent. for the money of another kingdom, to which the laws of this had made it
penal

penal to transport a guinea---then to recover the American patrimony, and to prosecute a new war with old enemies---all under the guise of Parliament---all without a murmur among the people---they mistrusted not, till ruin and beggary stared them in the face---they then searched for the cause, and found it cankering influence, which hath corrupted the freedom of Parliament, and corroded the vitals of the Constitution; they discover how diabolical is her enmity---that she ornaments the pills she poisons with---that honour, justice, and fidelity, are written in letters of gold upon the palm of her right hand, which while the subject dutifully bends to kiss, her left hand strikes the dagger in his heart---they know that revolutions seem to be engrafted in the Constitution; that the wheel is come round to the run of parliamentary oppression; that they cannot be saved, but by their out-of-door exertion. Timely, therefore, stand they on their guard---legally do they prepare for their defence, with the firmness of men, with the loyalty of Englishmen.

The people are persuaded, that his Majesty cannot feel himself hurt by any struggle of his people to free themselves and their Sovereign from the extremity they are reduced to; that he will be persuaded of their loyalty and unalienable affection

fection for his Royal Person and Government; that his moderation and love for his subjects will approve and applaud their constitutional exertions, for the protection of their liberties, and his sovereignty over them; that he will believe, that by his Majesty's gracious endeavours "*sublato jure nocendi*," they will transportedly return to their houses and families, with assurance of enjoying the society and comforts of parents and husbands--- that their wives and children shall fill the measure of their Monarch's bliss, by imploring the blessings on his Royal House.

But if the people unhappily mistake the mind of their Sovereign, they are persuaded his, at worst, can be but the error of too great a deference to ill-designing men, who yet consider the King as they did the childish, untutored Prince: if, however, with a perseverance which disgraces him who submits to it, he shall still resolve to make the good of his people yield to the counsel of such men, they dare tell him boldly, that a Prophet shall not yet be wanting in England, to declare, that a power shall yet punish the stout heart of the King, and the glory of his high looks ---if the King shall boast, by the strength of my hand have I done it, for I am mighty, and by my wisdom, for I am prudent; if he shall glory that he hath removed

moved the bounds of the people, and robbed their treasures, and put down the inhabitants like a valiant man, and that his hand hath found as a nest the riches of his people, and that as one that gathered eggs that are left, hath he gathered all the earth; he shall be convinced that there are those who dare lift the hand and open the mouth, and peep at him; he shall be taught, that the axe shall not boast itself against him that heweth therewith, nor the saw magnify itself against him that shaketh it; that the rod shall not shake itself against him that lifted it up, nor the staff lift itself up as if it were no wood*.

It is perhaps objected that the agency of the people is premature; that a general election is at hand, when the people may constitutionally avenge themselves, and provide for their security, by not returning to Parliament any person who shall have violated his trust under their present commission: the people thank such advisers, and will follow their counsel; but they mean to go somewhat further, otherwise, however they may so reform at the present, they shall before the end of seven years have the same work again to go through: the Temple of Liberty is defiled; the money-changers and all those who so long

* See Isaiah, ch. 10.

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bought and sold in it, have so contaminated the benches, the cieling, and the chair, that the purest patriotism cannot remain long untainted. These tradesmen the people are determined to cast out, and, if possible, to cleanse and purify the Temple itself---they are resolved that brokers shall find no places in it---if nothing less can keep it sacred, they will pull it down and build it up again every year:---they know that their Representatives and servants could not so grossly and in such numbers have trooped to the enemy of their liberties, if the means of corruption in the hands of the Crown had been as slender as heretofore; they know that the necessities of the State, and a change against which no foresight could provide, accumulated in the hands of his Majesty a weight of power and means of oppression, which our ancestors never meant should be voted in the Crown; but which, without personal injustice to him and great danger to the nation, he could not now be deprived of: the people do not desire to tie the hands of his Majesty, they only insist that he will not prevent them from fettering their own: they dare trust him, they cannot trust themselves; they mean by laws made in the common and accustomed course, without in any sort interfering with his Majesty's prerogatives, his revenues or his rights,

rights, to put it out of the power of the Representatives of the people ever to betray their trust: when his Majesty and the other branches of the Legislature shall consider seriously the dangerous state of the kingdom, the people are confident they will not refuse their assistance to such a plan of Parliamentary legislation---when it is considered, that unless the Reformation be speedy, that the property of the whole kingdom will scarcely suffice to pay the salaries of the tax-gatherers, among whom every soldier in the realm must be numbered; and the remedy of the Tyler against the poll-tax of Richard II. must otherwise become a model for every man in the kingdom.

The whole strength of the kingdom is concentrated in the Legislature. By how much is the power of that Assembly, by so much is its corruption to be dreaded*. "the Legislative power can change the Constitution, as God created light." A Constitution hath been established in the House of Commons, which if submitted to by the people, it is of no consequence what manner of men they shall return at the ensuing election; the people, therefore, must recur to that æra of the State when the safety of the kingdom might be said to rest in

* De Lolme, 174. b. 2. c. 3.

Parliament; when Parliamentary decisions were not like the Athenian ostracism; when the Representatives of the people did not carry their votes ready framed in their pockets to the house; when each House of Parliament was really a check upon the other, and both a curb to the intemperance of the Crown. If the people mean to settle the Constitution of Parliament in a permanent secure establishment, they must reduce the present monstrous figure to that simplicity it prospered in. At present the very name of Parliament is a mockery in England: the people of France have as full a share in the administration of the Government of that kingdom, through the medium of their Parliaments, as have the people of England through theirs: the King of France is not more secure of the registry of his edicts in the Parliament of Paris, than the King of England in the Parliament at Westminster. "The certainty of the will of the Prince" is alike the criterion in both---for the kingdom of England is not represented in Parliament. In the reign of Edward III. Parliaments were annual in England; and so then did Parliament enact they should for ever be*. Then were the Members of Parliaments the servants of the people; they received

* St. 4. Edw. 3. c. 14. 36 Edw. 3. c. 10.

their

their wages, and they did their work; they provided for the security of the kingdom against foreign force and domestic oppression. The honour of the office became at length the price of the service; the influence of the fountain of honour was soon operative on the members; the Presidency of the Court of York, a place created for the purpose, the Earldom of Strafford, and the Lieutenancy of Ireland, were the price of the apostacy of Sir Thomas Wentworth; of him "who had mouthed at Cæsar, till "he shook the Senate"--This man, the first public deserter from the standard of patriotism, was afterwards the boldest battleaxe against the liberties of his country--and his example hath been since sedulously followed.

The mischiefs arising from the disuse and abuse of Parliaments were attempted to be provided against by the statute 16 Charles II. and were thought to have been effectually guarded against by the statute 6 William and Mary; but after the the interval of the reign of Queen Anne, the statute 1 Geo. I. proved how slight is the security of Parliamentary ordinance under the present constitution of Parliaments. A new tenure of Parliamentary representation was then contrived--septennial Parliaments--the people elected a Parliament to serve for three years---that Parliament of its own motion

continued itself for seven.---By the same reason that Parliament may prolong its duration for four years beyond the term of its election, may it extend it to fourteen, to fourscore---or declare itself perpetual. If this power be inherent in the Parliament, it is not, as Mr. Blackstone says it is, too bold a figure to call its power "the omnipotence of Parliament," and the subjects of England are the abject slaves of their Parliamentary Representatives, or of any person or power by whom they can be influenced. It is not the magnitude of the trust, but its duration and permanency that tempts the breach of it. The power of the people in the Government is increased in the same proportion that the duration of that trust is diminished---Grant, as some writers insist, that the power of the people can legally be exerted only in the election of Representatives, the longer the time which intervenes between those elections, the weaker and more insignificant must be the power of the people in the scale of Government. If Parliaments were triennial, as under the statute of William and Mary, they should be the probity of treachery in the Representatives, would be very considerable reduced; but even so the constitution would be still far short of perfection. The executive authority is necessarily permanent and indissoluble; therefore,

fore, as a legislator, the King is trusted by the founders of the Government with the naked power of assent and dissent; the Lords also are a permanent indissoluble branch of the Legislature. Therefore are they denied the power of proposing any law by which the property of the kingdom may be in any degree affected; or of altering in the most minute circumstance any law proposed for that purpose, by that branch of the Legislature, to which by the Constitution this privilege is intrusted; that branch is the Commons---in which, because it is not permanent, but dissoluble periodically, this trust is without rivalship reposed. If the House of Commons shall not be reduced to that dissoluble state in which from the time of perfect establishment it was constituted, it is of the same consequence to the people to whose hands the strings of the public purse shall be committed; their money cannot, in such case, be less liable to squander in the hands of the Commons, than of the King or Peers. Every deviation from right is an approach towards wrong---from three years to seven was monstrous; and the present state of the Parliament, and the dissipation of the public money, supersede the necessity of argument, to demonstrate the danger of departing from established principles. The experiment of a perpetual House of Commons

mons was once tried in England, and the ruin of the Government and Constitution was the issue. The more distant from perpetuity the Parliament shall be, the greater must be the security of the liberties of the people. Annual Parliaments are coeval with the Constitution of Parliament in England---the desire of influencing and of being influenced gradually changed the tenure---and at length Parliament became as immortal as the King---the assent to the petition of right, by which triennial Parliaments were shadowed on the chart of liberty, was considered as a mighty concession in the King---as was the assent to the statute 16 Charles II. whereby the line was traced more deeply, no regard being had to the plunder of liberty by the Crown, where the ancient Constitution of Parliament was refused. Short Parliaments are the tree of life to the liberties of England, but it is hoped they are not, notwithstanding the usurpations of past times, the forbidden fruit.

It is objected that heats, animosities, and family rancour are the constant consequence of Parliamentary elections: the reason is obvious, because elections are a rarity; because the place is worth the purchase the candidate will buy; he will purchase the vote of the husband by the debauchery of the wife; the interest of the father
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by the seduction of the daughter; he will not, against the letter of the law, offer a bribe directly to any one; he will roll the golden apple among his favourites, and sow the seeds of septennial antipathy and malevolence in the family. But if elections were annual, all would be safe; no man would be mad enough to pay extravagantly for a lease which must determine with the year, and which a prerogative dissolution might contract the term of; for an interest for the certain term of seven years, much may be given, because from it much may be expected: bribery is the root of that tumult and animosity so loudly reviled against by the declaimers against short Parliaments. If the root be destroyed, no corrupted shoot can ever give offence; until it shall, unless man shall change his nature, no laws, however penal, can effect a Reformation. If the scene were repeated once every year, the election of Members to serve in Parliament would with the novelty entirely lose its indecency; tumultuousness and disorder, and considerably abate of its terror to freedom: the Sheriffs of the kingdom would execute the writs of election, with as little racket as any other process of the law; Candidates would not coach their friends the circuit of the kingdom for the advantage of their vote; and the only reward of the returning officer would be a belly full of beef and

and a few bottles of wine---the election of Mayor and Sheriffs of London should be as much the object of dissipation and ill-blood, as that of Knights, Citizens, and Burgeſſes to ſerve in Parliament.

But how beneficial ſoever annual elections might be, even thoſe would not entirely ſecure liberty to this country. According to the preſent parliamentary arrangement, the Sheriffs are obliged to ſend their precepts to the Sovereigns of all the nominal boroughs in their counties; many of which can ſcarcely evidence their repreſentative conſequence by one roofleſs manſion. Parliamentary repreſentation was originally deſigned to promote and protect the landed, literary, and commercial intereſts of the kingdom. To that end from the counties were called the Knights, for the landed; and from the cities and boroughs came men conuſcent of the concerns of trade and commerce; and from colleges, ſtudents; above a moiety of the Commons is now returned to Parliament from the rubbiſh of decayed boroughs; any one of which has not, in the memory of man, had port, market, manufactory, or ſchoolman. They are become ſole corporations; the proprietary of each is transferrable by deed, for valuable conſideration; and the Lord, or his Aſſignee, elects the beſt bidder or himſelf; you ſhall hear ſuch a fellow mouth in Parliament, as
if

if he were really concerned for any thing besides the security of his seat, or of his employment. Such men claim to have estates of inheritance in these boroughs, and every election-contest is considered as downright robbery. Whether Parliaments be annual, triennial, or septennial, to such men they must be perennial; these, therefore, the Minister ever must command. Through the medium of such men a majority never can be wanting to the Crown in Parliament, whilst the Crown is, as it ever of indispensable necessity must be, invested with the power of supplying the army and navy, and every department of the State with officers and deputies.

An equal representation of the kingdom in Parliament, can alone secure the liberties of the people against the combination of the constituent parts, and the representatives of the people against the corruption and influence of the Crown. This can be effected only by razing the decayed boroughs to the foundation, by declaring them for ever incapable of representation in Parliament, and by supplying the deficiency by election in the shires. If any Lord, or other great man, shall appear to be injured in his property by such a regulation, the justice of Parliament, no doubt, will not overlook him. Although when the case

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of

of Thomas Long*, in the reign of Queen Elizabeth, is recurred to on the occasion, it is probable, the compassion of Parliament will not be extravagant towards him.

These are the great objects of the people in the present Session of this Out-of-door Parliament---these great ends they will accomplish, they hope, peaceably and freely. They do less desire to reform by force, than by fear; they prefer rather to reclaim than to punish their Magistrates; they desire more to have it known, that they are able to act, than to act; they are convinced, that “the power of the
“ people is not when they strike, but
“ when they keep in awe; that it is when
“ they can overthrow every thing, that
“ they never need to move; that Manlius
“ included all in four words, when he
“ said to the people of Rome, *Ostendite*
“ *bellum, pacem habebitis**.”

* 4 Instit. 23.

* De Lolme, 278. B. 2, ch. 14.

F I N I S.

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